That money, once in the hands of the hotel company, is due by them as employer to Mr. Pereira in terms of his contract of employment and the provisions of the Act entitling the employer to relief from the employee for the employee's share of the contribution under the Act, entitles the hotel company to deduct that contribution, not only from the basic salary, but also from the money due under his contract to Mr. Pereira in respect of his share of the collected service charges. Their Lordships are therefore of the view that the reasoning of both the Federal Court and the learned judge, with great respect, does not negative the conclusion which has been already stated.

For these reasons their Lordships conclude that the argument for Mr. Pereira and the union should prevail and that the appeal should be allowed, that a declaration should be made in the terms sought by Mr. Pereira and the union, that upon the true construction of section 2 of the Employees Provident Fund Act 1951, Mr. Pereira and the hotel company are liable to make monthly contributions to the Board in respect of service charges paid to Mr. Pereira by virtue of his employment with the hotel company and that such monthly contributions be paid by Mr. Pereira and the hotel company to the Board from the date of this order. Their Lordships will advise His Majesty the Yang di-Pertuan Agong accordingly, and that Mr. Pereira and the union are entitled to their costs against the hotel company and the Board in respect of the proceedings before the judge, before the Federal Court and in respect of this appeal.

Appeal allowed.

Solicitors: *Herbert Smith & Co.; Philip Conway Thomas & Co.*

SINGAPORE REPORTS

HANG JONG JUAN v. TAN YEO SOON

[C.A. (Wee Chong Jin C.J., Sinnathuray and Thean JJ.) February 5, 1985]

[Singapore – Civil Appeal No. 40 of 1984]

Damages – Compound depressed skull fracture – Quantum – Award of $42,000 – Whether amount wholly erroneous.

Tort – Road accident – Negligence – Damages – Appeal against quantum – Onus on appellant – Whether award wholly erroneous.

This was an appeal by an infant, the appellant, against the judgment of Chua J. who assessed general damages suffered by the appellant at $42,000. The respondent admitted 80% liability. The accident occurred on October 24, 1980 when the appellant was knocked down by the respondent who was riding a motor-cycle. The appellant suffered a compound depressed skull fracture in the right parieto-occipital region. The fracture was surgically treated by removal of the depressed bone and repair of torn dura. He recovered well and was discharged from hospital on December 1, 1980. He was nine at the date of the accident and thirteen at the date of trial. After his discharge he received outpatient treatment. There was indication that he stood a good chance of suffering from epileptic fits. The learned trial judge assessed damages for pain and suffering and loss of amenities at $25,000; for future medical attention at $2,000, and for loss of earning capacity at $15,000, and gave judgment for the appellant for $33,600, being 80% of the total assessment of $42,000.

Held, dismissing the appeal: (1) in an appeal against the quantum of damages, it is settled law that the onus on the appellant is a heavy one and it must be established plainly that the trial judge's award was a wholly erroneous estimate;

(2) in all the circumstances, it was quite impossible to say that the amount of $42,000 by way of general damages was a wholly erroneous estimate.

COURT OF APPEAL.

Cheong Yuen Hee for the appellant.

Nagaraja Balasubramanya Rao for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the Judgment of the Court) : The appellant, Hang Jong Juan an infant, suing by his mother and next friend, Choo Sew Khim, appealed against the judgment of Chua J. who assessed the general damages suffered by the appellant at $42,000. Briefly stated, the facts are these. On October 24, 1980 the infant was crossing Changi Road when he was knocked down

by a motor-cycle ridden by the respondent and suffered injury. On admission into hospital the same day an X-ray and CT Scan showed he had a compound depressed skull fracture in the right parieto-occipital region. The fracture was surgically treated by removal of the depressed bone and repair of torn dura. He recovered well and was discharged from hospital on December 1, 1980. He was nine years old at the date of the accident and thirteen at the trial date.

After his discharge he received outpatient treatment. He had a left-sided weakness. He was re-assessed on March 3, 1982 by Dr. Baratham, Senior Neuro-Surgeon of the hospital. He was said to have occasional headaches and poor memory. His school performance had worsened from 5th-7th position in his class before the accident to 30th position. On clinical examination, no abnormality was detected although the brain wave trace showed severe disturbance in the region of the injury which is an indication that he stood a good chance of suffering from epileptic fits.

On October 27, 1983 Dr. Nei, a consultant neurologist, examined the appellant at the request of the respondent's solicitors. In his report he said that the appellant had residual deficits, namely (1) left hemiparesis with moderate disability particularly in performance of skilled movements with the left hand; (2) post traumatic headaches which are frequent and severe; (3) poor academic performance for one year after the injury but which had improved since 1982; and (4) significantly increased risk of epilepsy in later years. The risk was about 30%. On March 14, 1984 the appellant was again examined by Dr. Baratham who found that his condition had remained fairly static.

At the trial Dr. Baratham said that the appellant stood "a good chance of suffering from epileptic fits of the grandmal type. During a grandmal epileptic fit there would be twitching of one limb which would spread to one half of the body and finally involve the whole body. In the case of grandmal the patient would be treated by anti-convulsant drugs for a long period but not necessarily throughout his life. There are sometimes some minor side effects. He was of the opinion that it would not be dangerous for the appellant to take part in physical activities such as sports or games but if he does have fits he would be restricted from driving, working at heights or with fast moving machinery. In the appellant's case as there is no record of any fits he would not place any restriction on the kind of work he might do and if no fit occurs in the first five years the chance of him having fits would be small.

When cross-examined he said that judging from the injury, the duration of the coma and the nature of the brain wave tracing, the appellant would have a 10% to 15% chance of getting fits and he would be keeping him on anti-convulsant drugs for at least another five years. He said it was difficult to assess the damage to the appellant's mental abilities but, as the head injury was severe, it could have resulted in a reduction of mental ability. The left-sided weakness was very minimal and the appellant could run and jump.

The respondent who admitted to 80% liability did not call any witness and relied on Dr. Nei's report. The trial judge assessed damages for pain and suffering and loss of amenities at $25,000; for future medical attention at $2000 and for loss of earning's capacity at $15,000 and gave judgment for the appellant for $33,600 being 80% of the total assessment of $42,000.

The appellant appealed on the ground that the assessment of $42,000 was too low. It was argued that the judge gave too much weight to the evidence that the appellant had, up to the date of trial, not suffered any fits and had failed adequately to take into account the probability of the appellant getting fits in the future. It was also argued that the judge had failed to take into account the kind of awards for similar injuries and the fall in the value of money. We dismissed the appeal and now give our reasons.

In an appeal against the quantum of damages, it is settled law that the onus on the appellant is a heavy one and it must be established plainly that the trial judge's award was a wholly erroneous estimate. In this case the amount assessed for general damages was $42,000 and on the facts it must be very much a matter of estimation and in the realm of guesswork rather than arithmetical calculation. It has not been shown to us during the argument nor was there any indication in the judgment that the learned judge failed to appreciate or to take into account the risk of epilepsy of the grandmal type developing. On the medical evidence the risk was 30% according to Dr. Nei, who was not called as a witness and 10 to 15% according to Dr. Baratham who treated the appellant. In all the circumstances we were of the opinion that it was quite impossible for us to say that the amount of $42,000 by way of general

damages was a wholly erroneous estimate. We were also not persuaded that there was any discernible trend in previous awards for similar injuries. For these reasons we dismissed the appeal.

Appeal dismissed.

Solicitors: *Y.H. Cheong; Niru & Co.*

THE "THORLINA;" THE "THORLINA", OWNERS & ORS. v. KEPPEL SHIPYARD LTD.

[C.A. (Wee Chong Jin C.J., Lai Kew Chai & Thean JJ.) July 15, 1985]

[Singapore – Civil Appeal No. 47 of 1983]

Shipping Law – Bareboat charter – Contract for repair – Whether owners liable – Action in personam – Admiralty jurisdiction – High Court (Admiralty Jurisdiction) Act (Cap. 6), s. 4(4).

This was an appeal against the order of the High Court made on July 8, 1983 upon hearing of a motion brought by the appellants to set aside the Writ of Summons and Warrant of Arrest, the judgment and the said order. The principal issue was whether the appellants, Abaris Carriers Ltd. (owners of the vessel "Thorlina"), were a party to a contract for the repair of the vessel carried out by the respondents. The appellants had chartered the vessel to Denimar Shipping N.V. of Willemstad, Curacao, Netherlands Antilles ("Denimar"). The High Court held the appellants liable. On appeal:

Held, allowing the appeal: (1) the contract for the repair of the vessel was made between the respondents and Denimar. The appellants were not a party thereto and would not be liable to the respondents on the claim in an action *in personam*;

(2) the admiralty jurisdiction could not be invoked by the respondents against the appellants under section 4(4) of the High Court (Admiralty Jurisdiction) Act (Cap. 6).

Case referred to:

(1) *The St. Merriel* [1963] P. 247, 258.

COURT OF APPEAL.

Miss Lai Siu Chiu for the appellants.
C. Arul for the respondents.

Cur. Adv. Vult.

Thean J. (delivering the Judgment of the Court): The appellants, Abaris Carriers Limited of Nicocia, Cyprus, were at all material times the owners of the vessel, "Thorlina" (the "vessel"). By a bareboat charter dated July 9, 1982, the appellants chartered the vessel to Denimar Shipping N.V. of Willemstad, Curacao, Netherlands Antilles ("Denimar"). By an agreement dated July 16, 1982 Denimar engaged Fincham Shipping Corporation of Monrovia, Liberia ("Fincham") to provide officers and crew for the vessel, and by another agreement, called Technical Management Agreement, also dated July 16, 1982 Denimar appointed Fincham as managers of the vessel. Under the second agreement Fincham is obliged, among other things, to "man, operate, victual and supply" the vessel and to keep the vessel "at all times fully classed under present NKK provisions, in good running order and condition and have her regularly overhauled and repaired when necessary." Fincham in turn appointed Unishipping Services Limited of 1 Seething Lane, London, England ("Unishipping") as managers responsible for the crew and operation of the vessel.

Unishipping acting on behalf of the charterers, Denimar, by two letters dated August 25 and September 3, 1982 respectively invited six local shipyards to tender for the repairs of the vessel, and in response thereto the respondents successfully tendered for the same, and carried out repairs to the vessel in or about October 1982. On or about October 13, 1982 a sum of $50,000 was paid to the respondents to account of the amount then outstanding. The statements of account of the respondents were made out to Unishipping and the receipt for the part payment of $50,000 was made out to Denimar. In November 1982 a discussion on the bills of the respondents between the respective representatives of the respondents and Denimar took place and the parties then acknowledged and agreed in writing that "the net amount for payment" was $171,046: see exhibits collectively marked "LSC 4". However, no payment was made subsequently. The respondents on April 7, 1983 took out a writ *in rem* claiming for a sum of $123,151, which was later amended to $126,338.96, being the balance due for repairs carried out on the vessel, and arrested the vessel. No appearance was entered on behalf of the appellants and on July 8, 1983, upon application made by the respondents, the Court ordered that judgment in default of appearance be given for the respondents in the sum of $126,338.96 with interest and costs and that the vessel be appraised and sold by the Sheriff either by private treaty or public auction.

On August 3, 1983, the appellants applied by way of Notice of Motion for the Writ of Summons